

OCT 25 2006

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Patent and Licensing Group

Fax

Page 1 of 16

Confidential

Date: 25-Oct-06

To:
Art Unit:
Fax Number:

Examiner: ARIENNE M. LEZAK
2143
(571) 273-8300

From:

Shamini N. Green

Fax: Number:

(480) 715-7738

Applicant(s):

Bradford H. Needham

Application No.:

09/912,427

Docket No.:

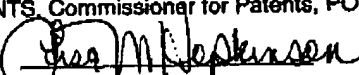
42390P11167

Filed:

7/26/2001

Title:

METHOD AND APPARATUS FOR IMAGE SHARING
BASED ON FACES IN AN IMAGE

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Fax Cover Sheet (1 page)

Transmittal Form (1 page)

Reply Brief and Response To Notice Of Non-Compliant Appeal (13 pages)

Copy of Page 13 of Appeal Brief (1 page)

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PTO/SB/21 (09-04)

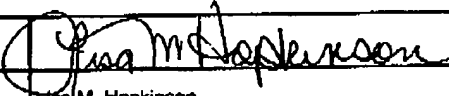
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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/912,427
	Filing Date	07/26/2001
	First Named Inventor	Bradford H. Needham
	Art Unit	2143
	Examiner Name	Lazak, Arlene M.
	Attorney Docket Number	42390P11167
Total Number of Pages in This Submission		16

ENCLOSURES (Check all that apply)		
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<input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Fax Cover Sheet Copy of page 13 of Appeal Brief
<input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	Remarks	

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Intel Corporation		
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Date	October 25, 2006

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Date of Transmission: 10-25-2006 By: Lisa M. Hopkinson
Lisa Hopkinson

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Bradford H. Needham

Atty. Docket No: 42390.P11167

App. Serial. No.: 09/912,427

Group Art Unit: 2143

Filed: 07/26/2001

Examiner: Lezak, Arienne M.

Title: METHOD AND APPARATUS FOR IMAGE SHARING BASED ON FACES IN
AN IMAGE

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**REPLY BRIEF AND RESPONSE TO NOTICE OF
NON-COMPLIANT APPEAL**

Dear Sir:

Pursuant to 37 C.F.R. § 41.41, Appellant submits this Reply Brief, in response to the Examiner's Answer mailed August 25, 2006 and in response to the Notice of Non-Compliant Appeal Brief mailed September 27, 2006. All arguments in Appellant's Appeal Brief, filed June 8, 2006 (hereafter "Appeal Brief"), are herein incorporated into this Reply Brief.

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A. RESPONSE TO EXAMINER'S ANSWER

(i) The combination of Sheridan and Kang is improper

The Examiner rejects Appellant's argument in the Appeal Brief that the combination of Sheridan and Kang is improper. The Examiner's essentially repeats the language from the December 15, 2005 Office Action to show the alleged rationale for the combination. Additionally, the Examiner states that 'the Sheridan reference clearly teaches, "image indexing", as previously cited (Sheridan – Col. 10, lines 50-67 & Col. 11, lines 1-12 and as noted by Appellant, (Appeal Brief, p.9). Appellant strongly disagrees with this position and with the Examiner's reliance on this phrase to suggest a proper combination of these references.

As previously discussed in the Appeal Brief and highlighted again herein, Sheridan discusses an image distribution method and system, with no mention of any type of facial recognition technology while Kang describes an apparatus and method for detecting speaking person's eyes and face, without any suggestion that the system may be used in an image distribution method and system of Sheridan. Appellant continues to maintain that nothing in either reference suggests that one of ordinary skill in the art would have thought to combine the two baring hindsight. The discussion of "image indexing" arose as a result of the Examiner's statement of alleged motivation, i.e. that it would have been obvious to one of ordinary skill in the art at the time of the invention by Appellants to incorporate the use of face recognition technology into the Sheridan "image distribution/indexing" method and system because Kang "enumerates the fact that image indexing is one field, which highly regards face recognition technology (Kang, Col. 1, lines 26-30)". Appellant pointed

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out previously, and once again stands by the statement, that the Examiner's use of the phrase "image distribution/indexing" to describe Sheridan is improper and inaccurate. Barring the Examiner's conclusory statement that Sheridan describes "image distribution/indexing", Appellant maintains that there is nothing that would suggest that Sheridan describes an image indexing scheme and/or a combination of Sheridan with Kang.

The Examiner appears to be suggesting that the mere mention of the word "index" in both references would somehow make such a combination obvious to one of ordinary skill in the art. The Examiner basically argues that Sheridan does in fact include the word "index" in its specification and that Kang mentions "image indexing". The Examiner then jumps to the conclusion that this is sufficient to make the combination of these references proper. Appellant strongly disagrees with the Examiner's rationale and submits that the mere use of the word "index" simply cannot be used as the basis for a combination. The general concept of indexing is well known in the art and is not the heart of the invention. Thus, the important point to be considered here is the fact that Sheridan and Kang are directed at different technology areas (image distribution and facial recognition technology) and that even if both areas of technology employ some form of "indexing", that in and of itself simply cannot establish a basis for combining the references.

In addition to the use of the word "index" in both references, the Examiner also states as a basis for properly combining Sheridan with Kang the fact that 'Sheridan teaches "image indexing" based on "predetermined characteristics", which predetermined characteristics are any suitable predetermined characteristics determined by the operator of the system, and which predetermined characteristics could obviously include identification

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of any portion of any photo wherein an index has been applied" (Reply, Page 11).

Appellant fails to follow the Examiner's logic with this statement. Whether or not "Sheridan teaches image indexing based on predetermined characteristics" is irrelevant to the claimed invention because as highlighted in the Appeal Brief, Sheridan describes the phrase "predetermined characteristics" as

"By "predetermined characteristics" in this case, is referenced any suitable predetermined characteristics determined by the operator of the system. For example, hub station 20 may be set such that any image set signal received will be stored and indexed with its associated identification signal. Alternatively, the "predetermined characteristics" could be set so that only a complete image set is so stored, or incomplete image sets (such as might result from an interruption of a connection between a processor-scanner station 2A to 2N and hub station 20, or from corrupted data) or digital image sets in a format not accepted by hub 20, may be stored but are identified as not meeting the predetermined characteristics (for example, they are stored with an associated identification indicating incomplete or corrupted data, or a data format not supported by hub station 20)."

Thus, the predetermined characteristics are clearly not facial characteristic.

Additionally, although the Examiner goes on to "explain" why these predetermined characteristics somehow render the combination of Sheridan with Kang obvious, Appellant is still at a loss. Essentially, the Examiner states that "the use of facial recognition technology and the extraction of image content data for image indexing was well known in the art at the time of Applicant" as demonstrated by Kang (relied on) and Wang (cited, but not relied on). The Examiner then goes on to discuss Wang, which was not relied on or discussed in the Office Action to show that "Wang clearly exemplifies the use of facial recognition technology and the extraction of image content data for image indexing as well known in the art at the time of Applicant" (Reply, Page 11). In other words, the Examiner appears to be saying that a third reference exists which may discuss both the concept of

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image indexing as well as the use of facial recognition technology (Appellant makes no such concession), and as a result, it renders the combination of Sheridan with Kang obvious.

Appellant is at a loss to understand how the existence of Wang (which was not relied on) is at all relevant to the fact that Sheridan and Kang are an improper combination. As set out in M.P.E.P. § 706.02(j), "(t)here must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." Appellant respectfully disagrees that Wang demonstrates that "the use of facial recognition technology and the extraction of image content data for image indexing was well known in the art at the time of Applicant". Additionally, even assuming arguendo that Wang does in fact combine the use of facial recognition technology and the extraction of image content for image indexing, this fact is irrelevant in the present context. One reference cannot be used to show that this concept was "knowledge generally available to one of ordinary skill in the art" that renders the combination of Sheridan and Kang obvious. In fact, since the Examiner did not rely on Wang to reject the claimed invention, Wang clearly did not teach or suggest each element of the claims. As such, Appellant respectfully submits that the mere existence of Wang cannot be relied upon to show that the combination of Sheridan and Kang somehow renders obvious the combination of these two different areas of technology.

In summary, Appellant respectfully submits that although the Examiner has presented various arguments in the Reply, none of these arguments present a convincing argument as to how or why it would have been obvious to one of ordinary skill in the art to

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combine Sheridan with Kang. As such, Appellant respectfully requests the Board to overturn the rejection to the claims for at least this reason.

(ii) The Examiner did not establish a prima facie case of unpatentability

The Examiner relies on the arguments stated above to show that a *prima facie* case of unpatentability was in fact established. Appellant respectfully disagrees. Appellant reiterates that in order to establish a *prima facie* case of unpatentability under 35 U.S.C. § 103, the combination of the cited prior art must teach or suggest *every limitation* of the claims being rejected. Therefore, if even one claim element or limitation is not taught or suggested by the combination of references, a *prima facie* case is not established. The Examiner thus has the burden of producing a *factual basis* for his rejection and for establishing unpatentability by identifying how each recited claim element is allegedly disclosed by the cited reference(s) or combination of references.

Appellant respectfully submits that the Examiner failed to establish such a *prima facie* case. The Examiner states that Appellant relied on "Appellant's misperception as the Examiner's motivation to combine". Appellant strongly disagrees. Appellant respectfully submits that in addition to the fact that there is in fact no motivation to combine these references (as discussed in detail above), the Examiner additionally failed to show a factual basis for how the references teach or suggest each and every element of the claimed invention. For example, the Examiner's conclusory statement that "the Sheridan reference clearly teaches image indexing" is simply not sufficient to show a

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factual basis. As alleged support for this statement, the Examiner points to a large portion of text in Sheridan (in the Office Action, the Examiner points to Sheridan, Col. 10, lines 61-67 and Col. 11, lines 1-59, in the Reply, the Examiner points to Sheridan, Col. 10, lines 50-67 and Col. 11, lines 1-12). This simply does not rise to the level of showing a "factual basis" for how Sheridan teaches each element of the claimed invention.

Additionally, in the Office Action, the Examiner highlighted various sections of Sheridan (Sheridan, Col. 5, lines 19-42, Col. 10, lines 61-67 and Col. 11, lines 1-59) as teaching the element of "applying identifying information associated with the image to the sharing rule to determine the one or more recipients with which the image should be shared". Appellant respectfully reiterates that this "block citation" does not rise to the level of establishing a "factual basis" for the rejection. For at least these reasons, Appellant maintains the position that the Examiner failed to establish a *prima facie* case of unpatentability. Appellant thus maintains that the rejection to the claims should be overturned for at least this reason.

(iii) The combination of references does not render Claims 1-32 unpatentable

The Examiner once again points to large portions of text in Sheridan to allegedly show how Sheridan, in combination with Kang, renders the claimed invention unpatentable. Once again, Appellant strongly disagrees. As previously discussed, pointing to these large sections of Sheridan simply does not establish a *prima facie* case

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of unpatentability, as is required. Additionally, Appellant submits that these sections simply do not support the Examiner's contention.

The Examiner states that Appellant only disputes the specific use of face identification information within the Sheridan patent and that Kang teaches the "well-known application of face identification information for image indexing". Appellant strongly disagrees. Appellant does not dispute the fact that Kang teaches an apparatus for detecting the position of a human face in an input image or video image (Kang, Abstract). Appellants is not, however, claiming the general concept of identifying faces in an image, rather the combination of determining *face identifying information* for faces in an image and utilizing the face identifying information to *automatically make images available*. Thus, although Appellant concedes that Kang teaches an apparatus for detecting the position of a human face, Appellant strongly disagrees that Kang teaches or suggests determining face identifying information for a face in an image.

The Examiner appears to suggest that Appellant cannot individually argue that Sheridan and/or Kang do not teach certain elements of the claimed invention ("Instead, for purposes of the well-known application of face identification information for image indexing, Examiner has clearly and specifically cited the Kang reference, the proper combination of which with the Sheridan reference (as noted herein, clearly and obviously teaches each and every aspect of Appellant's claimed invention and the isolation of which may not be individually argued, as noted within the prior Office Action dated 15 December 2005" Reply, Page 13). Appellant respectfully submits that Appellant is not attempting to argue each reference separately. Rather, Appellant is attempting to show

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that the Examiner failed to show how or why it would be obvious to combine these discrete concepts in each reference. As a result, Appellant is forced to show that the discrete elements allegedly shown by each reference are improper.

Appellant continues to maintain the position that Sheridan and Kang simply cannot be combined in the manner suggested by the Examiner because Appellant is not claiming the general concept of identifying faces in an image, rather the combination of determining face identifying information for faces in an image and utilizing the face identifying information to automatically make images available. The Examiner tries to show how Sheridan and Kang teach discrete elements of the claims, but Appellant respectfully submits that the Examiner failed to make a proper showing. As such, Appellant reiterates that the combination of Sheridan and Kang simply does not teach or suggest this combination of elements.

In summary, Appellant respectfully reiterates that the Examiner has failed to show how Sheridan and Kang render the independent claims and all claims dependent on those claims unpatentable. For all the foregoing reasons, Appellant respectfully submits that Sheridan and Kang, alone or in combination, do not render the independent claims and all claims dependent on these independent claims unpatentable under 35 U.S.C. § 103 and respectfully request the rejection thereof to be overturned.

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B. AMENDMENT TO APPEAL BRIEF

With respect to the following summary, please replace Section V of the Appeal Brief with the following (strikeouts indicating deletions and underlines indicating new text):

V. SUMMARY OF CLAIMED SUBJECT MATTER

Simply stated and generally speaking, one embodiment of Appellant's invention (as captured in independent Claims 1, 11, 19, 29 and 31 ~~4, 8, 12 and 18~~) is directed to a method, system and article for image sharing based upon faces in an image. The following description of the claimed subject matter applies to all the independent claims unless otherwise specified. A sharing rule defines which one or more recipients images are to be shared with based on face identifying information. More specifically, face identifying information associated with an image is identified, and the face identifying information is applied to the sharing rule to determine which one or more recipients the image should be shared with. (Specification, Paragraph 14).

Face identifying information may be associated with an image manually or automatically. (Specification, Paragraph 16). Face identifying information can be of various types such as personal names, identification numbers, or any other face identifying information associated with an image. The face identifying information may also be associated with the image before, contemporaneously with, or after the image is taken and may be associated with the image in the camera or elsewhere such as on a computer system. Indeed, the image may be further processed by, for example, changing format, before or after the face identifying information is associated with the image.

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(Specification, Paragraph 18). Face identifying information may be applied to one or more sharing rules to determine which one or more recipients an image should be made available. A sharing rule may define that all images of a particular person should be shared with a particular recipient or a group(s) of recipients (Specification, Paragraph 20), specify a set of face identifying information (e.g. images taken of specific people), specify a range of face identifying information (e.g. images taken of all members of a family), or specify one or more characteristics of a particular item or set of face identifying information (e.g. images taken of all males in a family), whether in place of or in combination with specifying particular face identifying information such as a personal name. (Specification, Paragraphs 21).

C. SUPPLEMENT TO APPEAL BRIEF

With respect to the previously filed Appeal Brief, Appellant respectfully brings the following matter to the Board's attention. This information was unavailable at the time of filing of the Appeal Brief.

II. RELATED APPEALS AND INTERFERENCES.

Regarding appeals known to Appellant, the Appellant's legal representatives, or assignee that may directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal, Appellants direct the honorable Board of Patent

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Appeals and Interferences to co-pending Patent Application, Serial No: 09/892,553
(Attorney Docket No: P11166, hereafter "P11166"), also assigned to Appellant. Without conceding that P11166 is related in any way to, or that it should have any impact on, the present appeal, Appellants nonetheless bring this matter to the Board's attention because P11166 was referenced during the early phase of prosecution of the present application. There are no interferences before the Board of Patent Appeals and Interferences known to Appellant, the Appellant's legal representatives, or assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal.

PAGE 13 (APPEAL BRIEF)

Although Appellant's own records indicate that all pages of the Appeal Brief were received by the Board, the Notice of Non-Compliant Appeal Brief indicates that Page 13 of the originally filed Appeal Brief was cut off. Appellant therefore respectfully submits herewith a copy of Page 13 of the originally filed Appeal Brief.

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CONCLUSION

It is respectfully submitted that in view of the foregoing, all of the pending claims are patentable over the cited prior art references, alone or in any combination, and the Board is respectfully requested to overturn the rejections of record and allow this application to issue.

Respectfully submitted,

/Sharmini N. Green/

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Enclosure: Page 13 of Appeal Brief

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VIII. CONCLUSION

It is respectfully submitted that in view of the foregoing, all of the pending claims are patentable over the cited prior art references, alone or in any combination, and the Board is respectfully requested to overturn the rejections of record and allow this application to issue.

Respectfully submitted,

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